IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7090 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R. TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYVANTSINH P JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR BJ JADEJA for Petitioners

M/S PATEL ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of decision: 15/12/2000

ORAL JUDGEMENT

The present petition is filed challenging the order passed by the Mamlatdar & ALT in Agricultural Ceiling Case No.29 of 1982 dated 17.7.1989, whereby the land admeasuring 26 acres and 15 gunthas was declared

surplus. The petitioner being aggrieved of that filed an appeal no.2/89 before the Deputy Collector, Morvi, who also dismissed the appeal by order dt.31.3.90. Ld. advocate appearing for the petitioners invited attention of the Court to the observations made by the Dy Collector in concluding part of the order that while calculating the units whose lands are to be included in the units and on what basis unit shall be calculated is already provided in the Gujarat Agricultural Land (Ceiling) Act, 1960, amended as per the Amendment Act, 1972, which came into force with effect from 1.4.76. The Deputy Collector proceeded further to observe that all the provisions of the Hindu Succession Act are not required to be made applicable to the case while considering the calculation of unit and entitlement of the units.

2. The petitioner being aggrieved of that order of the Dy Collector by which the order of the Mamlatdar & ALT was confirmed, preferred a Revision Application bearing No.TEN/ BR/ 23/90 before the Gujarat Revenue Tribunal, which came to be rejected by the Tribunal by its judgement and order dated 22.3.1993, wherein the Tribunal made the following observations which reflect the approach of the Tribunal :

> ".. .. It is to be remembered that the Ceiling Act is a special Act, which would govern the position."

It goes without saying that the Tribunal also did not take into consideration the relevant provisions of the Hindu Succession Act.

3. On perusal of the orders passed by the authorities below, it is clear that the same are not in accordance with law inasmuch as the authorities did not take into consideration the relevant provisions of the Hindu Succession Act. The same are required to be quashed and set aside.

4. The petition is allowed. The orders at Annexures 'A', 'B' and 'C' are quashed and set aside. The matter is remanded to Mamlatdar & ALT to consider afresh in light of the observations made in this order and also the relevant provisions contained in the Hindu Succession Act.

5. The petition is allowed. Rule is made absolute in terms of the aforesaid directions. No order as to costs.

15th December 2000 (Ravi R. Tripathi, J.)

karim*